

Appl. No. : 09/817,535
Filed : March 26, 2001

REMARKS

In the Office Action, Claims 1-4 and 6-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kipp (U.S. Patent No. 5,890,136), and further in view of Schlamp (U.S. Patent No. 5,431,250) and Wittsche (U.S. Patent No. 6,556,975).

Response to Rejections

In the Office Action, the Examiner takes the position with respect to Claims 1-4 and 6-19, that Kipp, Schlamp and Wittsche, in combination, disclose applicant's invention. The Examiner discusses each reference in detail and then summarily rejects all of Applicant's claims as follows: "The combination of Kipp, Schlamp and Wittsche encompasses all features of applicant's invention. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of Kipp and Schlamp to explicitly present purchases by a customer from multiple merchants, and aggregate the purchase data on the basis of the identity of the purchaser, as disclosed, by Wittsche, for the motivation of facilitating a transfer of purchases to consumers."

MPEP 2141.03 specifically disallows this form of rejection, without some objective reason to combine, as quoted below:

A statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.)

In this case, the Examiner has presented no objective reason to combine the cited references. Further, the Examiner does not specifically demonstrate that any of Applicant's claim limitations are shown in these references.

By focusing on specific references, claims and limitations in the remarks that follow, Applicant does not intend to imply an agreement with the Examiner's assertions with respect to other references, claims, and limitations.

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As to Independent Claim 1

Independent Claim 1 recites "receiving the associated items [ordered by the consumer from a plurality of merchants] at a single geographic location." None of the references cited by the Examiner disclose these limitations. Schlamp, cited by the Examiner, discloses an on-line shopping mall from which a user can make purchases from multiple merchants. Schlamp, however, does not address the issue of how to send, deliver, or provide the purchases to the user. Kipp and Wittsche relate to systems for transferring products from a single merchant to a user, but neither of these references addresses the difficulties and costs implicated when multiple merchants are involved. Accordingly, the above recited limitations are not shown or even suggested in the cited art.

Worth noting is the common knowledge that a user himself will typically receive items ordered from multiple merchants at a single geographic location – his home. In this case, however, the additional limitations "based at least on the association of the items on the computer system, physically aggregating the items at the location; and for each consumer, transferring the aggregated items to the consumer" will not be satisfied.

Since all of the limitations of Claim 1, have not been shown in the cited references, Applicant respectfully submits that Claim 1 has not been shown obvious. Claims 2-4, 6, 18 and 19 depend from Claim 1 and should likewise be allowable for at least the reasons set forth above with respect to Claim 1. These dependent claims also recite additional patentable distinctions over the cited art. For example, Claim 3, as amended, recites "on the computer system, for each consumer, receiving notification of the pending delivery of at least one of the items to the location."

As to Independent Claim 7

Independent Claim 7 has been amended to recite, "presenting to the consumer a set of at least one geographic locations from which set the consumer is prompted to make a selection [and] receiving from the consumer a selection of a geographic location from the set". These limitations are similar to those previously in canceled Claim 15 which was before the Examiner previously. None of the cited references, however, disclose presenting such a set to a consumer and receiving a selection in response.

Since all of the limitations of Claim 7 have not been shown in the cited references, Applicant respectfully submits that Claim 7 has not been shown obvious. Claims 8-14 and 16-17

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depend from Claim 7 and should likewise be allowable for at least the reasons set forth above with respect to Claim 7.

CONCLUSION

In view of the foregoing remarks, Applicant submits that the application is in condition for allowance. If, however, issues remain which can potentially be resolved by telephone, the Examiner is invited to call the Applicant at his direct dial number of (408) 730-0110.

Respectfully submitted,

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